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Discussion on the special theme for the year: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Norway

Summary

This document contains the response of the Government of Norway to the questionnaire sent to Member States concerning the recommendations of the eighth session of the Permanent Forum on Indigenous Issues.

* E/C.19/2010/1.

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I. Response to recommendations[1]

Paragraph 53: endorse and implement the United Nations Declaration on the Rights of Indigenous Peoples

1. In general, the rights laid down in the Declaration have already been implemented in Norway, for example, through the Finnmark Act and the Procedures for Consultations between the State Authorities and Sámediggi (the Sami Parliament) of 11 May 2005. Reference is made to the Explanation of the vote given by Norway at the time of the adoption of the Declaration (see annex II).

2. With reference to the rights to land in article 26 et seq, Norway considers that for States parties to International Labour Organization (ILO) Convention No. 169, concerning Indigenous and Tribal Peoples in Independent Countries, these rights must be understood to refer to the rights specified in that Convention. Norway ratified ILO Convention No. 169, in 1990. In order to meet the provisions in ILO Convention No. 169, article 13 et seq, the Finnmark Act was adopted by the Storting (the Norwegian Parliament) in 2005. The process of following up the report from the Sami Rights Committee II will establish a base for considering future legal amendments concerning Sami rights outside the county of Finnmark.

3. The recognition of the right to self-determination referred to in the Declaration requires that indigenous peoples have full and effective participation in a democratic society and in decision-making processes relevant to the indigenous peoples concerned. Several articles in the Declaration specify how the right to self-determination may be exercised. Consultations with the peoples concerned is one of the measures outlined in the Declaration. As a State party to ILO Convention No. 169, Norway has implemented the consultation requirements specified in that convention. For further details, see section II below.

Paragraph 54: recognize fishing rights

4. The Coast and Fishery Commission completed an official report on the right to salt water fisheries in February 2008 (NOU 2008: 5). In the report, the Commission argues that people living by the fjords and by the coast, have a right to fishery in the sea outside Finnmark. This is based on historical usage and international law concerning indigenous people. The public hearing of the report has ended. The proposals are currently being considered within the Norwegian Ministry of Fisheries and Coastal Affairs.

Paragraph 55: ratify the Nordic Sami Convention

5. The Government is currently working on the draft convention on Nordic Sami cooperation, in cooperation with the authorities in Finland and Sweden and the three Sami parliaments. Negotiations on the draft convention must be carried out before the Nordic States can endorse and ratify a Nordic Sami Convention. A joint proposal for how these negotiations may be carried out is now under consideration. A key question is how the Sami parliaments shall participate in negotiations. Further work on the draft convention depends on all the collaborating parties' decisions on this matter.

[1] For the text of the recommendations, see *Official Records of the Economic and Social Council, 2009, Supplement No. 43* (E/2009/43), chap. I, sect. B.

Paragraph 67: reach an agreement with the Sámi Parliament on the draft mineral act

6. There has been an ongoing process over 15 years to try to reach a new Mineral Act. Consultations concerning the Mineral Act took place in the period of 2007-2008 between the Government, Sámediggi, and the Sami Reindeer Herder's Association of Norway. Agreement was achieved on several provisions, but the consultation process was finalized without a full agreement. Sámediggi could not give its support to the proposed act, due to the fact that some provisions regarding Sami interests only apply to the county of Finnmark. The Proposition to the Storting was submitted in spring 2009. The views of the Sami parties (Sámediggi and the Sami Reindeer Herder's Association) were reflected in detail in the Proposition. The new Mining Act was adopted by the Storting in the spring of 2009, and the Act entered into force 1 January 2010.

7. Proposals for legislation concerning Sami land rights and resources outside of Finnmark County will soon be under consideration, and the Norwegian Government intends to engage in further consultations with Sámediggi regarding these issues.

Paragraphs 56, 58 and 60: recommendations to the Arctic States

8. The implementation of the Government's High North Strategy is being followed up in a number of areas. The environment, business development, infrastructure, maritime surveillance and knowledge and research are some of these areas. Knowledge is crucial for value creation, natural resource exploitation and environmental management in the High North. This includes knowledge about indigenous issues. In order to ensure the right for the Sami people to determine their economic, social and cultural development, Sámediggi and Sami representatives are involved in the implementation of the High North Strategy.

II. Information on how the Government is dealing with articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples

9. In 2008, the Government of Norway presented White Paper No. 28 (2007-2008) on Sami policy. In the White Paper, the concept of self-determination for the Sami people is discussed with reference to the United Nations Declaration on the Rights of Indigenous Peoples and the ongoing work on a Nordic Sami Convention. An unofficial translation of the relevant sections of the White Paper (section 1.3.6 and 1.3.7) is contained in annex I.

10. In practice, the right to self-determination must primarily be exercised through Sámediggi as an elected body with decision-making and consultative authority. In the Norwegian context, Sami self-determination is a question of whether our democratic system is capable of giving the Sami population an adequate degree of influence on the national political processes and decisions that concern them.

11. Some important measures have already been implemented, such as:

- The Finnmark Act
- New provisions in the Planning and Building Act concerning Sámediggi's authority to oppose in planning matters

- Procedures for consultations between state authorities and Sámediggi.

12. The Norwegian Government and Sámediggi agreed on Procedures for Consultations between the State Authorities and Sámediggi in 2005. The consultation procedures apply to the Government and its ministries, directorates and other subordinate state agencies or activities. Furthermore, they apply in matters that may affect Sami interests directly. The substantive scope of the consultations may include various types of matters, such as acts, regulations, individual decisions, guidelines, measures and decisions (e.g., in reports to the Storting). The consultations shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures. The procedures have led to increased awareness of the duty to consult in Government ministries and agencies. From January 2008 through May 2009, formalized consultations have taken place in 40 different cases, resulting in an agreement in all but a few.

III. Specific laws, policies and tools to address indigenous peoples

13. The Sami Act was adopted in 1987. The Act establishes Sámediggi, and contains provisions about elections to Sámediggi. In addition, the Act affirms that Sami and Norwegian are languages of equal worth. The language provisions give citizens the right to use Sami language in their encounter with public authorities. This applies to the translation of regulations, announcements and forms into Sami, as well as the right to use Sami in contact with the legal system and health and welfare services. Some of the provisions in the Sami Act are limited to the administrative district for the Sami languages. Nine municipalities are included in the administrative district. The district has expanded through the last years, and today the district includes municipalities both in the North-, Lule- and South Sami area.

14. The Finnmark Act ("the act relating to legal relations and management of land and natural resources in the county of Finnmark") was adopted by the Storting in the spring of 2005. The Act recognizes that the Sami people and others, through long use of land and water, have acquired rights to land and natural resources in Finnmark. The Finnmark Act established the Finnmark Estate, an independent body that now owns all the land that used to lie to the State (this constituted about 95 per cent of the land in Finnmark County). The Finnmark Estate is governed by a board where half of the members have been appointed by Sámediggi and the other half by the Finnmark County. In order to investigate and map existing rights, the act established a special Finnmark Commission. If there is disagreement concerning the commission's conclusions, the parties may bring the case before the Uncultivated Land Tribunal for Finnmark. This is a special court that passes legally binding judgments.

15. Another question concerns the Sami's right to use of land and natural resources south of Finnmark. On this issue, the Sami Rights Committee delivered an official report in December 2007. The report was on a broad hearing in 2008/2009 and the proposals in the report will be considered by the Government.

IV. Name of focal point on indigenous issues

Norwegian Ministry of Government, Administration, Reform and Church Affairs
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Postboks 8004 Dep
NO-0030 Oslo
Norway

Tel: +47 22 24 71 75

www.regjeringen.no/en/dep/fad.html

V. Capacity-building programme on indigenous issues

16. There is no regular capacity-building programme on indigenous issues for national civil service staff. The Department of Sami and Minority Affairs organizes seminars on indigenous issues on an ad hoc basis. These seminars are offered to civil servants within the Government Ministries and agencies who work with Sami issues. The Department also has an advisory function in order to facilitate the consultation processes between Government ministries and agencies and Sámediggi.

Annex I

White Paper No. 28 (2007-2008) on Sami policy

1.3.6 The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007. The Declaration is not binding under international law, but will constitute an important framework for further efforts to establish the rights of indigenous peoples. The Declaration will have particular significance in those countries where indigenous peoples reside, but which have not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Work on the Declaration has continued for many years. In 1993, the Human Rights Commission's Working Group on Indigenous Populations submitted a draft declaration. The draft was then worked on by a special working group of the Commission until a final draft, after lengthy negotiations, was adopted by the Human Rights Council in 2006. The General Assembly adopted the Declaration on the Rights of Indigenous Peoples with an overwhelming majority. Four countries, Australia, Canada, New Zealand and the United States of America, voted against adoption of the Declaration.

Representatives of the indigenous peoples and United Nations Member States cooperated closely in the work on the text. The Norwegian delegation to the working group that drafted the text consisted of representatives of the Norwegian authorities and Sámediggi (the Sami Parliament in Norway). Together with Sámediggi and Sami organizations, the Norwegian authorities have played a proactive role in bringing about a declaration.

Throughout the world, indigenous peoples are among the most marginalized social groups. Recognition of the rights of indigenous peoples in a United Nations document will be an important instrument for strengthening their status. Although the Declaration is not legally binding, it contains a strong encouragement to States to recognize the rights of indigenous peoples to land and resources.

Great importance has been attached to a declaration on the rights of indigenous peoples by the Sami. Although many of the rights laid down in the Declaration have already been implemented in Norway, for example, through the Finnmark Act and the Procedures for Consultations between the State Authorities and Sámediggi of 11 May 2005, the Declaration is an important signal of the State's general position regarding the rights of indigenous peoples.

The Declaration concerns the rights of the world's indigenous peoples. The Declaration contains provisions regarding both fundamental requirements such as food, health and education, and provisions regarding use of traditional resources and land areas. The Declaration ascertains the rights of indigenous peoples to land and natural resources that they have traditionally owned, occupied or used. These rights are restricted to apply to the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use. The Declaration's provisions concerning rights to land in article 26 et seq can be interpreted in various ways. In the case of Norway, indigenous peoples' rights to land are defined by ILO Convention No. 169.

The principal debate during work on the Declaration concerned the right of indigenous peoples to self-determination. In connection with the voting in the General Assembly, Norway submitted an interpretive declaration on the right of indigenous peoples to self-determination, stating that this right shall be exercised within the framework of the State's territorial integrity, and that, in Norway, it is deemed to be safeguarded through current arrangements and rights pursuant to Norwegian law. Recognition of the right to self-determination for Sami is consistent with the position held by Norway for a number of years, inter alia, in the two previous main white papers on Sami policy (Report No. 55 (2000-2001) to the Storting and Report No. 33 (2001-2002) to the Storting). We refer also to point 5.2.1 of the Standing Committee's recommendation S. No. 110 (2002-2003) concerning the concept of self-determination.

The Declaration makes it clear that self-determination embraces the right of indigenous peoples to work freely for their own economic, social and cultural development. At the same time, the right to self-determination may not be invoked in respect of actions contrary to the United Nations Charter or United Nations human rights conventions.

When exercising their right to self-determination, indigenous peoples have a right to autonomy or self-government in matters concerning their internal and local affairs, and a right to an arrangement for financing their self-government functions, cf. article 4. Recognition of the right to self-determination as referred to in the Declaration further requires that indigenous peoples have full and effective participation in a democratic community, and in decision-making that is relevant to them.

However, the practical implications of the right of the Sami to self-determination have not been fully clarified. The Government assumes that the debate on the right to self-determination must include a debate on the interpretation of the concept, and on how a right to self-determination can be implemented in practical policy. A people's right to self-determination does not necessarily have the same implications in cases where the right can be associated with a people that resides alone within a well-defined geographical area and cases where the right is associated with a people that is dispersed in areas where other ethnic groups also reside. The development of the right of the Sami to self-determination must also be considered in relation to any international precedence effects. Further clarification of the right of the Sami to self-determination may be of interest when the right to self-determination for indigenous peoples is to be defined by other States. See also section 3.1 of the Annual Report of Sámediggi for 2007.

In the preamble to the Declaration on the Rights of Indigenous Peoples, it is established that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration. In practice, this means that the rights laid down in the Declaration must be implemented in a manner adapted to the situation of the indigenous people concerned. In the Norwegian context, Sami self-determination is a question of whether our democratic system is capable of giving the Sami population an adequate degree of influence on the national political processes and decisions that concern them.

In Norway, a number of political areas will be relevant and be of considerable importance to the Sami. As regards such matters, the right to self-determination can be viewed as a right to influence and co-determination in matters that affect the Sami as a group. When such a right to participation and influence is to be implemented, two categories of rights may be considered. Firstly, it concerns a right to make decisions alone in matters that only apply to the Sami, i.e., cultural and linguistic autonomy. Examples are measures concerning Sami language and the Sami Development Fund.[1] Secondly, it must concern a right to genuine, effective participation in the exercise of public administration affecting both the Sami and the community that it is part of, for example as regards decisions concerning land-use planning and exploitation of resources. A right to participation may, inter alia, be implemented through consultations, and an obligation to consult the indigenous people concerned is also referred to in the Declaration. In Norway, the consultation obligation is implemented through the procedures for consultations between the State authorities and Sámediggi in accordance with article 6 of ILO Convention No. 169. The right to participation in the management of natural resources can also be exercised by the appointment by Sámediggi of representatives to joint governing bodies, such as *Finnmarkseiendommen* ("the Finnmark Estate") and the regional predator management boards.

In practice, the rights referred to must primarily be exercised through Sámediggi as an elected body with decision-making and consultative authority.

Although the concept of self-determination does not have a precise meaning, the Government and Sámediggi have conducted a dialogue on practical measures to implement Sami decision-making authority and co-determination within the scope of current regulations. Certain measures have already been implemented, such as the Finnmark Act and consultation procedures. Some have been submitted to the Storting, such as new provisions in the Planning and Building Act concerning Sámediggi's authority to oppose in planning matters. Others are currently under assessment or are undergoing consultation, for example, the proposal from the Coastal Fisheries Committee for Finnmark concerning participation in the management of sea fishing in Finnmark and the proposals from Sami Rights Committee II.

There will be a need for continued efforts to establish the specific implications of the right of the Sami to self-determination. It is moreover probable that importance will be attached to the solutions arrived at in Norway in international developments associated with the right to self-determination of indigenous peoples. The Government presupposes that the development of Sami self-determination will take place within the framework of an existing independent and democratic state and within Norway's existing geographical boundaries.

1.3.7 The draft Nordic Sami Convention

A Nordic expert group submitted its recommendations with a draft Nordic Sami Convention in autumn 2005. The Governments of Finland, Sweden and Norway agree to continue work on a Nordic Sami Convention, initially through continued work at the national level on follow-up of public hearings and relevant

[1] In the budget resolution for 2008, the Sami Parliament decided that the Sami Development Fund would be abolished. The arrangement would be replaced by *søkerbaserte tilskudd for næringsutvikling* [industrial development grants]. The geographical scope is the same as before.

impact assessments. A working group consisting of representatives from the Ministry of Labour and Social Inclusion, the Ministry of Justice and the Police, the Ministry of Foreign Affairs and Sámediggi has worked on Norway's follow-up of the draft convention, and submitted its report on 3 October 2007. It is aimed that the Sami ministers and presidents of Sami parliaments will clarify their positions before the next joint meeting in autumn 2008.

The draft convention prepared by a Nordic expert group takes as its point of departure that the Sami are indigenous peoples in Finland, Sweden and Norway. The draft has been prepared on the basis of the international instruments that the three countries are bound by. The proposed purpose of a Nordic Sami Convention is to "affirm and strengthen such rights for the Sami people that it may secure and develop its language, its culture, its industries and its social life with the least possible regard to national borders", cf. the expert group's draft of article 1 of the Convention.

In the draft of the Nordic Sami Convention, the right of the Sami to self-determination is laid down in article 3. The draft convention also contains provisions that aim to define the right to self-determination. Of central importance are the provisions concerning the authority of the Sami parliaments in decision-making processes. The draft convention assigns authority of varying degrees of co-determination to the Sami parliaments of Sweden, Finland and Norway according to the importance of the matter concerned for Sami interests (cf. article 14 ff.). Firstly, the right is laid down of the Sami parliament to make independent decisions where the Sami parliament has the power to do so in accordance with national or international law (article 15). Further, in questions of major importance to the Sami, negotiations shall be held with the Sami parliament before decisions on matters are made by a public authority (article 16). The draft also provides a right to express opinions and a right for the Sami parliament to be represented on public boards and committees (article 17). The Sami parliament shall further be given the opportunity to be heard during the considerations by the national assembly of matters that particularly concern the Sami (article 18). The Sami parliaments' right to represent the Sami internationally is laid down in article 19 of the draft. Further work on the draft may be an important contribution to clarification of the meaning of the right of the Sami to self-determination.

Annex II

Statement in explanation of vote by the representative of Norway following the adoption in the General Assembly of the Declaration on the Rights of Indigenous Peoples, on 13 September 2007

The rights of indigenous peoples are of key importance to Norway. We therefore welcome the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, which we believe will help promote the protection of the rights of indigenous peoples worldwide. The Declaration sets a standard of achievement to be pursued in a spirit of partnership and mutual respect. In Norway, we will do this in partnership with the Sámi people in Norway, who are recognized as indigenous people by the Government.

The recognition of the right to self-determination referred to in this Declaration requires that indigenous peoples have full and effective participation in a democratic society and in decision-making processes relevant to the indigenous peoples concerned. Several articles in the Declaration specify how the right to self-determination may be exercised. The Declaration emphasizes that the right to self-determination shall be exercised in conformity with international law.

Consultations with the peoples concerned is one of the measures outlined in the Declaration. As a State party to International Labour Organization Convention No. 169, concerning Indigenous Tribal Peoples in Independent Countries, Norway has implemented the consultation requirements specified in that Convention. Self-determination is furthermore exercised through the Sámi Parliament, which is an elected body with decision-making and consultative functions within the framework of the applicable legislation. The Government has also signed an agreement with the Sámi Parliament in which it set out procedures for consultations between the Government and the Sámi Parliament.

Norway considers that the Declaration is to be understood within the framework of the United Nations Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by General Assembly resolution 2625 (XXV) of 24 October 1970 (see A/61/PV.107).

For indigenous peoples, the question of land is a crucial issue for indigenous culture and identity. With reference to article 26, we state that for States parties to ILO Convention No. 169, the rights concerned must be understood to refer to the rights specified in that Convention.

As concerns article 30, Norway intends to continue with military activities necessary for upholding general contingency preparedness, including national and allied training and exercises, as we consider these to be justified by a significant threat to public interests.